



Federal Communications Commission  
Washington, D.C. 20554

December 19, 2005

**DA 05-3200**

**Released: December 19, 2005**

**CERTIFIED MAIL – RETURN RECEIPT REQUESTED**

ETC Communications, Inc.  
WYLE(TV)  
P.O. Box 850  
Sheffield, AL 35660

Re: ETC Communications, Inc.  
WYLE(TV), Florence, AL  
Facility ID No. 6816  
File No. BRCT-20041130AMV  
NAL/Acct. No. 0641420020  
FRN: 0004062220

Dear Licensee:

This letter constitutes a NOTICE OF APPARENT LIABILITY FOR FORFEITURE in the amount of three thousand dollars (\$3,000), pursuant to Section 503(b) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 503(b), for willful violation of the Commission's rule requiring each licensee of a commercial television broadcast station to file an Ownership Report (FCC Form 323).

Section 73.3615 of the Commission's Rules (Rules) requires broadcast licensees to file an Ownership Report (FCC Form 323) when filing the station's application for renewal of license and every two years thereafter on the anniversary of the date its renewal application is due to be filed.<sup>1</sup> Section 73.3526(e)(5) of the Rules also requires each licensee of a commercial broadcast station to place in the public inspection file for its station, a copy of the most recent, complete ownership report filed with the Commission.

On November 30, 2004, you filed a license renewal application (FCC Form 303-S) for station WYLE(TV), Florence, Alabama (BRCT-20041130AMV). In response to Section IV, Question 3 of that application, you certify that, during the previous license term, station WYLE(TV) failed to place in its public inspection file at the appropriate times, all of the documentation required by Section 73.3526 of the Rules. In Exhibit 14, you state that the licensee last filed a Biennial Ownership Report on November 17, 2000 and that its Biennial Ownership Report for 2004 was filed along with the instant renewal application. You assert that there were no changes in ownership during the intervening period.

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<sup>1</sup> 47 C.F.R. § 73.3615.

Moreover, in Exhibit 17 to station WYLE(TV)'s renewal application, you state that the licensee's owner and operator has been hospitalized repeatedly over the last several years. You assert that although the licensee's owner and operator is extremely careful about complying with the Commission's Rules, the repeated hospitalizations caused him to forget about filing a Biennial Ownership Report.

ETC Communications, Inc.'s failure to file a 2002 Biennial Ownership Report constitutes a willful violation of Section 73.3615(a) of the Rules. Section 503(b) of the Act provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.<sup>2</sup> In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."<sup>3</sup>

*The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules set a base forfeiture amount of \$3,000 for failure to file a required form.<sup>4</sup> As explained above, station WYLE(TV) has apparently failed to comply with Section 73.3615 of the Rules by not filing a 2002 Biennial Ownership Report.

In evaluating an application for license renewal, the Commission's decision is governed by Section 309(k) of the Communications Act of 1934, as amended (Act), 47 U.S.C. § 309(k). Section 309(k) provides that if, upon consideration of the application and pleadings, we find that (1) the station has served the public interest, convenience, and necessity; (2) there have been no serious violations of the Communications Act or the Commission's Rules; and (3) there have been no other violations which, taken together, constitute a pattern of abuse, we are to grant the

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<sup>2</sup> 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act . . . ." See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

<sup>3</sup> 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

<sup>4</sup> 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17114, Appendix A, Section I.

renewal application.<sup>5</sup> If, however, the licensee fails to meet that standard, the Commission may deny the application – after notice and opportunity for a hearing under Section 309(e) of the Act – or grant the application “on terms and conditions that are appropriate, including a renewal for a term less than the maximum otherwise permitted.”<sup>6</sup>

On balance, we find that ETC Communications, Inc.’s violation of Section 73.3615 does not constitute a “serious violation” of the Commission’s rules warranting designation for evidentiary hearing. Moreover, we find no evidence of violations that, when considered together, evidence a pattern of abuse. Further, we find that station WYLE(TV) served the public interest, convenience, and necessity during the subject license term. We will therefore grant the license renewal application below.

Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of Act, and Sections 0.283 and 1.80 of the Rules, ETC Communications, Inc. is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of three thousand dollars (\$3,000) for willfully violating Section 73.3615(a) of the Rules.

IT IS FURTHER ORDERED that, pursuant to Section 1.80 of the Commission’s Rules, within thirty days of the release date of this Notice of Apparent Liability, ETC Communications, Inc. SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.<sup>7</sup>

IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to Les W. White, Chief Executive Officer, ETC Communications, Inc. at the address listed above, and to its counsel, Kevin M. Walsh, Esq., Irwin, Campbell & Tannenwald, P.C., 1730 Rhode Island Avenue, N.W., Suite 200, Washington, D.C. 20036-3101.

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<sup>5</sup> 47 U.S.C. § 309(k)(1). The renewal standard was amended to read as described by Section 204(a) of the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996). *See Order, Implementation of Sections 204(a) and 204(c) of the Telecommunications Act of 1996 (Broadcast License Renewal Procedures)*, 11 FCC Rcd 6363 (1996).

<sup>6</sup> 47 U.S.C. §§ 309(k)(2), 309(k)(3).

<sup>7</sup> *See* 47 C.F.R. § 1.1914.

Finally, IT IS ORDERED that, the application (File No. BRCT-20041130AMV) of ETC Communications, Inc. for renewal of license for station WYLE(TV), Florence, Alabama, IS GRANTED.

Sincerely,

Donna C. Gregg  
Chief, Media Bureau